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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Eighteenth session

SUMMARY RECORD OF THE 5th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 29 April 1998, at 10 a.m.

Chairperson: Mr. RATTRAY

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GE.98-15903 (E)

The meeting was called to order at 10.15 a.m.

CONSIDERATION OF REPORTS PRESENTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6 (a)) (continued)

Initial report of Sri Lanka (continued) (E/1990/5/Add.32; E/C.12/Q/SRI.1; HRI/CORE/1/Add.48; written replies by the Sri Lankan Government to questions raised in the list of issues (in-session document, with no symbol, distributed in English only))

1. At the invitation of the Chairperson, the Sri Lankan delegation resumed their places at the Committee table.

2. The CHAIRPERSON invited the Sri Lankan delegation to reply to oral questions from the members of the Committee.

3. Mr. PALIHAKKARA (Sri Lanka) said that Sri Lanka had long been a multi-ethnic country. However, the Government was confronted with a minority-rights problem. It had, moreover, openly admitted this, notably in its report to the Commission on Human Rights. Aware that this problem was undoubtedly linked to the unitary State structure, the Government had proposed radically to amend the Constitution to make Sri Lanka into a "Union of Regions" with regional autonomy approaching that of a federal system. This draft reform was currently being considered by a parliamentary commission and by all the political parties represented in the Parliament. It was also the subject of wide-ranging debate within civil society. The Government hoped that it would be adopted as soon as possible either by Parliament, with a two-thirds majority, or by the people, in a referendum that the Government might decide to organize in the light of results in the provincial council elections, which were to take place in July 1998.

4. All the political parties, including the Tamil parties, had recognized that the proposed reform of the Constitution would make it possible to settle the ethnic issue. Only the Liberation Tigers of Tamil Eelam (LTTE) had rejected the draft. The State and the armed forces therefore had no alternative but to show the LTTE that they could not create a Tamil State separate from Sri Lanka by force of arms and by terrorist acts.

5. The Government was taking all possible steps to relieve the sufferings inflicted on the civil population by the conflict. It was being aided in this by the support of international institutions and NGOs, particularly the World Food Programme, the International Committee of the Red Cross, Médecins sans frontières (MSF) and OXFAM.

6. Allegations that the Government was hampering the delivery of humanitarian and food aid were totally without foundation. The Government wanted the civilian population groups affected by the conflict to support its proposals for peace and reform. Starving them would certainly not achieve their aim. Moreover, the Representative of the Secretary-General on internally displaced persons, Mr. Deng, had been able to see for himself that the Sri Lankan Government was careful not to use food as a weapon against the civilian population. Furthermore, the WFP figures spoke for themselves. In 1996 and 1997 no less than 5.8 million kg of supplies had been sent to

these regions each month. The Government hoped, however, that with the help of the democratic Tamil parties it would manage to persuade the LTTE to take a seat at the negotiating table.

7. On the issue of stateless persons, Mr. Palihakkara recalled that these were Tamils brought from India by the British colonial rulers to work in Sri Lankan plantations, and who had swelled the ranks of the Tamils already long-established in Sri Lanka. At the start of the 1960s, India and Sri Lanka had signed an agreement, according to which those Tamil workers could either return to India, or remain in Sri Lanka and obtain Sri Lankan citizenship. However, it had not been possible to grant citizenship to all those persons simultaneously. This was why the draft of the new Constitution provided for all of them to receive Sri Lankan citizenship.

8. Mrs. PERERA (Sri Lanka) pointed out that many of the rights set out in the Covenant, such as the right to promote one's culture, and the right to form and join trades unions, were among the fundamental rights proclaimed by the Sri Lankan Constitution. Others, such as the right to fair working conditions, to social security, and to free primary education, were guaranteed by national legislation. Moreover, the draft reform of the Constitution provided for the incorporation of the right to adequate nourishment, to work, to health and to social assistance, inter alia, in the Constitution as fundamental rights. Finally, the Sri Lankan Government was conscious of the need to amend internal legislation to bring it into line with the provisions of the Covenant, as demonstrated, for example, by changes made in labour legislation and the new laws adopted on social protection.

9. Only fundamental rights recognized as such by the Constitution could be invoked before the Supreme Court. Issues regarding the exercise of other rights set out in the Covenant came within the purview of the Sri Lankan Human Rights Commission, which could make recommendations to the Government on measures to be taken to align legislative texts with the provisions of the Covenant. This Commission was also vested with the power to monitor the welfare of persons detained under the Emergency Regulations. When the Commission became aware of a violation of a fundamental right, it could either refer the matter to a court or recommend remedial action to the authority or person committing the violation. In the case of failure to comply, the Commission was required to submit a detailed report to the President of the Republic, who was authorized to transmit it to the Parliament.

10. Regarding employment of women in the private sector, the clause pertaining to equality of the sexes, contained in article 12 of the Constitution, prohibited any discrimination against women regarding employment in the public sector, but there was currently no law concerning equality of opportunity in the private sector. The National Plan of Action called on the Ministry of Labour and the competent public bodies to take the necessary steps to remedy the situation. The Labour Courts heard cases of arbitrary dismissal and could also award just and fair compensation inter alia, in sexual harassment cases.

11. The laws on prostitution involving children and cruelty to children had been toughened in 1995. Their enforcement needed to be accompanied by measures to raise public awareness and to help victims. Currently those

measures were principally the responsibility of the Department of Probation and child-care services, but it was proposed to create a child protection authority in the near future with a broader sphere of competence and responsibility for coordinating the activities of the police, the legal authorities and social services in this field. International cooperation was being strengthened in order to prosecute foreign paedophiles active in Sri Lanka.

12. Legislative reforms were under way to align labour legislation with ILO standards and, in particular, to raise the minimum age for employment to 14. In addition, the Government was carrying out many activities related to the ILO International Programme for the Elimination of Child Labour (IPEC): assessing the incidence of child labour and examining national legislation in this area, making an inventory of hazardous occupations, adapting the education system to the needs of working children, strengthening the capacity of government and non-governmental organizations to combat trafficking in children, and increasing legal assistance to working children, increasing the enforcement capacity of the law, taking a survey of children working in plantations, raising awareness of trafficking in children, creating an Information Centre on Child Labour and Crisis Centres, and setting up a compendium of laws.

13. Although the Sri Lankan Constitution proclaimed the equality of all before the law, traditional or religious laws in force in certain communities perpetuated a form of discrimination against women within the family. Under all the legal systems, unmarried women enjoyed their civil rights without restriction. General legislation, Kandyan regional law and Muslim law recognized that a married woman had the right to sign contracts, enter into business transactions and freely to dispose of her assets and income. In 1995, the minimum age of marriage was raised from 12 to 18 years in the general and Kandyan regional law. In Muslim law there was no minimum age of marriage, and the consent of the woman was not required. Regarding divorce, general legislation recognized the same grounds for men and for women, whereas Kandyan regional law and Muslim law put the woman at a disadvantage. Custody of children had hitherto usually been awarded to the father: but the current tendency was to take into account the best interests of the child. Attempts to make those rights uniform had encountered resistance within the communities concerned, which were desirous of preserving their cultural identity. The draft reformed text of the Constitution provided that the President of the Republic should, during the three months following the promulgation of the new Constitution, appoint a Committee to examine all written and unwritten laws, in order to identify cases of incompatibility with the new Constitution. The Report of that Committee would then be submitted to Parliament, enabling legislators in all communities to realize that uniformity of rights was in the interest of all of them.

14. A law specifically relating to domestic violence was being prepared. To facilitate complaints by victims, the main police stations had set up separate women and children's Desks. Moreover, several non-governmental organizations provided battered wives not only with counselling but also with legal aid in divorce proceedings.

15. The Workmen's Compensation Ordinance had been amended in 1990. Until that date, only workers receiving less than Rs. 500 per month had been eligible for compensation in the event of work-related accident or disease. Since that date, the sum of compensation had been calculated according to the severity of the loss - death or permanent total or partial incapacity for work - on the basis of a scale which had been adjusted upwards. The amount was payable as a lump sum, agreed by the parties or, failing that, determined by the Commissioner of Labour.

16. Mrs. JEGARAJASINGHAM (Sri Lanka) pointed out that Sri Lanka had the second highest suicide rate in the world, with 49 cases per 100,000 inhabitants. The Government had appointed a task force to discover the root causes of this problem. The task force had submitted its Report on 3 December 1997, and its conclusions had been brought to the attention of the competent authorities. Various measures were being taken to combat this scourge (raising awareness among the population, improving available treatment, etc.). Mental health and disabilities were also priorities for the Sri Lankan Government, which had declared 10 to 16 October 1996 Health Week.

17. Elderly persons currently accounted for 10 per cent of the Sri Lankan population, and the proportion was expected to reach 20 per cent in 20 years' time. In addition to the pension schemes mentioned in the initial report (E/1990/5/Add.32), in November 1996 the Social Security Board had established a special Pension and Social Security Benefit Scheme for the 2 million self-employed workers aged between 18 and 59 years, whose annual income was below Rs. 36,000, and not covered by any other scheme. The Sri Lankan Government had prepared draft legislation to protect the rights of elderly persons, inter alia, to set up an elderly persons' Secretariat, responsible for ensuring their ongoing autonomy. Two subcommittees were working on the health and nutrition problems of the third age. Finally, some elderly persons with knowledge and expertise that the country needed could be re-employed on a contract basis.

18. The problems encountered by some of the 500,000 Sri Lankan women working in the Middle East, and by their families, had led the Government to appoint a task force, which had studied the issue and made several recommendations. On that basis the authorities had taken steps to raise the awareness of migrant women of the consequences of their migration, to train them with a view to their employment abroad, to help them with airport procedures, and grant them low-interest loans. The Ministry of Women's Affairs offered advisory services to migrant women workers and the Ministry of Social Services made arrangements for the care of their children. The Government also planned to train women migrant workers in sound financial management, and to engage Probation Officers to supervise their children who remained in Sri Lanka. Some Sri Lankan embassies and consulates abroad had established special facilities for women migrant workers. Finally, the Government was taking steps to protect women migrant workers from the violence to which they were sometimes subjected in the host country, and from precarity of employment.

19. Mr. MALIYADDE (Sri Lanka), in reply to a question about health and safety at work, said that Sri Lanka had 6 labour inspectors who, assisted by 22 engineers, had carried out several thousand inspections in 1997 in various factories and workplaces. In addition to their role as advisers, these inspectors could also initiate legal proceedings in cases of fatal injury or breaches of labour legislation.

20. With regard to wage-fixing boards, the Government planned to reduce their number from 39 to 3, in effect 1 for each of the 3 major sectors (primary, secondary and tertiary). It should be pointed out that those boards were generally set up at the request of workers in a given branch. If certain branches had no board, it was therefore because the workers concerned had not requested one. Nevertheless, the Minister of Labour was currently preparing, together with employers' and employees' representatives, the establishment of two wage-fixing boards, in particular in the precious stones and jewellery branch.

20. In reply to a question about the Poverty Alleviation Programme, Mr. Maliyadde said that that programme, which was implemented without any discrimination on the basis of ethnic origin or political opinion, had a two-pronged approach: social assistance enabling the poor to meet their essential needs until they were able to earn their own living; and assistance aimed at integrating them into normal economic life. As these two approaches were inseparable, it was not possible to implement the programme in regions where one or the other could not be applied. Nevertheless, almost half the population had already benefited, and the Government intended that everyone in need should benefit from the scheme.

21. Mr. Maliyadde said that job discrimination did not exist in the public sector, since recruitment was based on a system of ethnic quotas. However, that principle did not apply in the private sector. With regard to social security, there were a great number of pension and insurance schemes for workers in the private and public sectors, managed by private insurance companies and by the State. Regarding housing, the Government had set up a major programme to increase the quantity and quality of housing. Various housing aid measures had made it possible to increase the total housing stock from 1.5 million units in 1953 to 3.8 million in 1994.

22. Mrs. JIMENEZ BUTRAGUEÑO asked on what criteria housing was allocated. What was the Government's basis for evaluating the needs of those requesting housing?

23. Mr. RIEDEL inquired what proportion of the housing programme was destined for the most disadvantaged groups, particularly Tamil refugees living in the South. He also wanted to have more information on the Welioya colonization project, which gave every appearance of being a discriminatory practice, and more specifically, on forced evictions.

24. The CHAIRPERSON invited the delegation to reply to the questions.

25. Mr. GRISSA believed he was right in saying that growth in employment in the public sector was at zero. Consequently, the non-discriminatory policy mentioned by the Government was ineffective, given that it applied only to the public sector. This being the case, how could they correct the errors of the past, in other words the discriminatory practices which, statistics showed, had disadvantaged minority groups?

26. Mr. PALIHAKKARA (Sri Lanka) said that forced evictions did not take place in Sri Lanka. With regard to refugees, there were two programmes provided for their benefit: temporary housing provided for displaced persons in the North, with the aid of HCR and certain NGOs, and permanent housing within the framework of a rebuilding programme being implemented in the province of Jaffna in collaboration with UNDP.

27. Mr. Palihakkara explained that what certain propagandists presented as a colonization programme in Welioya was, in fact, a regional development project. Since independence the Government had undertaken a certain number of regional and agricultural projects, enabling individuals to set up home wherever they wished. The decision of which region to settle in was not based on ethnic considerations, and no forced evictions had taken place.

28. Replying to Mr. Grissa, Mr. Palihakkara explained that ethnic quotas had been introduced to mitigate discrimination against Tamils. However, this measure had been contested in the Supreme Court as constituting a violation of the right of each individual to have access to employment on the basis of his or her merit alone. It was therefore a very thorny issue, particularly for a developing country confronted with the most intransigent of all guerrilla movements. The Government had thus decided to institute decentralization, in the hope that each region would implement the employment policy best suited to it.

29. For Mrs. BONOAN-DANDAN (Rapporteur for Sri Lanka) the information regarding Welioya could not be attributed to propaganda alone, since it was a fact that Tamils had been evicted from their dwellings, which were today occupied by over 3,000 families of Sinhala origin. Moreover, those families had been the target of several attacks by the LTTE, and only the presence of a large military force enabled them to continue living there. This issue led back to the deep causes of the conflict and, in this respect, it had to be acknowledged that the replies given by the delegation did not shed any new light or lead to a better understanding of the problem.

30. Mr. TEXIER wanted the delegation to return to the issue of job discrimination, but solely with regard to the private sector. Were there any provisions in legislation guaranteeing equal pay for men and women, and non-discrimination in hiring practices? If so, did Labour Courts and the Supreme Court have the means to ensure they were respected? Mr. Texier was not convinced that the quota policy was the best solution to counter discrimination.

31. The CHAIRPERSON gave the floor to the Sri Lankan delegation.

32. Mr. PALIHAKKARA (Sri Lanka), in reply to Mrs. Bonoan-Dandan, said that no ethnic group had been subject to eviction procedures on the part of the Government. On the other hand, no one ever mentioned that the LTTE had evicted 40,000 Muslims from the west of the country and 400,000 Tamils from Jaffna. On each occasion, the Government had provided humanitarian aid to those evicted. As for the deeper causes of the conflict, the Government was trying to eliminate them by allowing all ethnic groups a certain measure of autonomy.

33. Mr. RIEDEL said that the Committee was well aware of violations committed by the LTTE but that that was not the issue. He suggested that the delegation should convince their Government to sign Protocol II Additional to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflicts. On what grounds had the Sri Lankan Government not yet signed this instrument?

34. The CHAIRPERSON invited the delegation to reply to the question.

35. Mr. PALIHAKKARA (Sri Lanka) said that his Government was committed to the multi-ethnic nature of the country and could therefore not tolerate forced evictions based on ethnic considerations. With regard to Welioya, he promised to transmit fuller details to the members of the Committee at a later date, and invited them to read the reports of responsible organizations such as Amnesty International, Human Rights Watch and the ICRC, whose staff members had recently had the opportunity to visit Jaffna. Regarding Additional Protocols I and II to the Geneva Conventions, the issue of adhesion to these instruments was currently being studied. In any case, although Sri Lanka was not a party to those Protocols, the humanitarian activities of international organizations were proceeding without hindrance in the field, even in conflict zones.

36. Mr. GRISSA said he was of the opinion that the districts mentioned in table 9 of the initial report by Sri Lanka (E/1990/5/Add.32) were both those where Sinhala were fewest and those with the greatest proportion of newborn infants with low birthweight. It would therefore appear that non-Sinhala infants were worse off than others, and that there was a correlation between the birthweight of a child and its ethnic origin. What could this be attributed to? What was the incidence of infectious diseases?

37. Mr. WIMER wanted to know India's position on the conflict and on the means currently being employed to establish peace, bearing in mind the historical links between the two countries and their geographical proximity.

38. Mr. PILLAY asked whether a state of emergency had been declared in certain regions of Sri Lanka and, if so, whether certain rights recognized by the Constitution, and hence the economic, social and cultural rights of certain sectors of the population, had been suspended. Furthermore, although there seemed to be a whole series of constitutional and other statutory provisions, the population appeared to be unable to exercise those rights effectively. Women, for example, were the victims of job discrimination in the private sector, since they did not receive equal pay for equal work. What were the Government, the unions and the Sri Lankan Human Rights Commission doing to remedy that situation?

39. Mrs. JIMENEZ BUTRAGUEÑO asked how many associations worked to protect women's rights.

40. Mr. ADEKUOYE, after hearing the presentation made by the Sri Lankan delegation, said that the production of various agricultural products seemed to have been in decline over the past few years. What was the Government doing to revive the sector and to improve methods of production, conservation and distribution of foodstuffs, in line with their obligation under article 11 of the Covenant?

41. Mr. SADI asked whether the Sri Lankan Government war implementing a policy aimed at actively promoting harmonious coexistence between ethnic groups, and national reconciliation at both government and grass-roots level. Were individual initiatives of this kind undertaken? Did inter-ethnic marriages occur or was each ethnic group a completely separate entity?

42. The CHAIRPERSON invited the Sri Lankan delegation to reply to these questions.

43. Mr. MALIYADDE (Sri Lanka) explained that nutrition occupied a major place in government policy and that they had, among other things, just set up a national committee responsible for coordinating the activities of all bodies active in that area. With regard to alleged links between ethnic origin and malnutrition, there was no evidence to confirm their existence. The experts from UNICEF, the FAO and other bodies present in Sri Lanka and concerned with the issue had not established any correlation between these two factors. The reports of these bodies would be transmitted to the members of the Committee to enable them to familiarize themselves with them to understand the situation better. This issue would, moreover, be the subject of close study in the various provinces, particularly those in the east of the country, where the three main ethnic groups were all present.

44. The Sri Lankan Government had already taken measures to remedy the crisis in food production and to develop the agricultural sector, but food provision was not entirely dependent on local production, certain foodstuffs being imported. The Government was making an effort to introduce more profitable and viable crops so as to attract more young people into rural areas. Steps were also being taken to improve the overall situation in the agricultural sector: storage of foodstuffs, credit facilities, etc.

45. In reply to the question from Mr. Texier, Mr. Maliyadde said that job discrimination on the basis of sex or ethnic origin was prohibited by the Constitution. In the private sector, recruiters were given some flexibility, and merit was an essential criterion. The Sinhala were perhaps currently in the majority in this sector, but with the implementation of regional development programmes, more job opportunities should exist in the north and east of the country. The Government was aware that women ought to have more access to employment and was taking steps to that end. It was intended that the fruits of development would gradually be more equally shared among the regions.

46. Mr. PALIHAKKARA (Sri Lanka) said, regarding the incidence and prevalence of infectious diseases, that vaccination cover extended to 90 per cent of the country, and that fuller details would subsequently be sent to the Committee by the competent health authorities. He explained that the various communities (ethnic, religious, etc.) coexisted harmoniously despite the presence of some extremists here and there. There were, for example, many inter-ethnic marriages, and multicultural events. Organizations in civil society offered many opportunities for harmonious coexistence between the communities.

47. A state of emergency was proclaimed when serious danger threatened the safety of the population. But in no case was the exercise of economic or social rights suspended, any more than were essential services or food supplies.

48. With regard to the positions of the Indian and Sri Lankan Governments on the ethnic issue, it should be explained that both considered that the solution to this problem rested in delegating certain powers to the regions, whilst respecting the territorial integrity of Sri Lanka. The Indian Government would by no means be in favour of a division of Sri Lankan territory along ethnic lines, since such a solution could have unfortunate consequences for India. The two Governments were therefore in perfect agreement on that point. To that end, they were cooperating in various fields with the aim of persuading the Liberation Tigers of Tamil Eelam (LTTE), who had rejected the political process, to take a seat at the negotiating table.

49. Mrs. PERERA (Sri Lanka) said that women in Sri Lanka frequently failed to assert their rights for two main reasons: ignorance of those rights, and the difficulties they encountered in obtaining justice. Having said that, many NGOs were active in promoting the cause of women - help for battered wives, legal aid, groups promoting awareness of women's rights, training, etc. - and were working in close cooperation with the Government.

50. Mr. PALIHAKKARA (Sri Lanka) thanked the members of the Committee for the constructive observations they had made on the report, and said that the additional information they had requested would be transmitted to them.

51. The CHAIRPERSON thanked the Sri Lankan delegation and announced that the Committee had finished its consideration of the initial report of Sri Lanka (E/1990/5/Add.32).

52. The Sri Lankan delegation withdrew.

The meeting rose at 1.05 p.m.